

KOAY BAN SIEW vs. PUBLIC PROSECUTOR.

[App. Crim. Juris. (Murray-Aynsley C.J., Singapore, Pretheroe Ag. C.J., Malayan Union and Bostock Hill, J.) November 21, 1947]

Criminal Procedure Code Ss. 3, 302, 306 (3) and 448 — Appeal — Whether appeal can be made by a person who is not a party to the case — Customs Enactment Ss. 117 and 119.

The appellant was the owner of a junk which was forfeited as having been used for the commission of an offence against the Customs Enactment 1936. He appealed against the forfeiture to the High Court which reserved the appeal for the consideration of three Judges.

Held, (1) that as the appellant had not been a party to the case in the first place he had no right of appeal from the order made; (2) that S. 448 of the Criminal Procedure Code cannot be relied on to enable a person who was not a party to the original charge to intervene at a later stage and constitute himself an appellant; (3) that the matter was not properly before the Court and the appeal must therefore be dismissed.

CRIMINAL APPEAL.

T. E. Conaghan for the Appellant.

Wylie (Crown Counsel) for the Respondent.

The judgment of the Court was given by:—

Murray-Aynsley, C. J. :—This appeal originated as two prosecutions in the Court of the District Judge at Penang viz. *Public Prosecutor v. Sam Tong Hoon and seven others* (case No. 255/47) and *Public Prosecutor v. Yeoh Ah Miang* (case No. 256/47). The two cases were joined and tried together. At some stage of the trial the eighth accused in the former case, Khoo Hock Siew, was apparently discharged and his name does not appear as one of the accused persons in the appeal record. All the remaining accused pleaded guilty and were fined various amounts and various terms of imprisonment were fixed in default of payment of the fines. The prohibited goods which were seized in the motor junk concerned were ordered to be confiscated. The prosecuting officer then applied that the junk should also be declared forfeited. The District Court Judge adjourned this application for consideration. After hearing the arguments of counsel the learned Judge decided on July 11th, 1947, that he had "no discretion in this application" and that he "must make the order asked for".

From this order declaring the junk to be forfeited the owner of the junk, Koay Ban Siew, appealed to the High Court under section 302 of the Criminal Procedure Code. On the appeal coming before that Court on the 22nd September, 1947, the learned Judge ordered that the appeal be reserved for hearing before a Court of three or more Judges in pursuance of section 306 (3) of the Criminal Procedure Code.

The appeal was argued before this Court on the 5th November, 1947 and Counsel for the respondent

took no preliminary objection to the jurisdiction of the Court to hear the appeal. Judgment was reserved.

At this stage attention must be drawn to the fact that the appellant, Koay Ban Siew, was not a party to the original prosecutions: he was at no time joined as a party and only actively intervened in the case through his Counsel when the forfeiture of his junk came up for consideration by the District Court Judge. The original charges were laid under sections 117 and 119 of the Customs Enactment, 1936, but section 3 of the Criminal Procedure Code provides, *inter alia*, that:—

all offences under any other law shall be inquired into and tried according to the (provisions of this Code), subject, however, to any enactment for the time being in force regulating the manner or place of inquiring into or trying such offences.

No such enactment is in force regulating the manner of inquiring into offences under the Customs Enactment, 1936, and consequently the procedure in such cases is that prescribed by the Criminal Procedure Code. Omitting parts not relevant to the present issue section 302 of that Code provides that:—

.....any person who is dissatisfied with any judgment, sentence or order pronounced by any District Court.....in a criminal case or matter to which he is a party may prefer an appeal to the High Court against such judgment, sentence or order in respect of any error in law or in fact.....

It is abundantly clear that this section limits the right of appeal to the High Court in a criminal case or matter to a party to the case or matter. Counsel for the appellant and for the respondent, who were anxious that the substantive point in issue in this case should be treated as a test case, referred to the provisions contained in section 448 of the Criminal Procedure Code as a possible means of overcoming the "irregularity" of the *status* of the appellant.

.....finding, sentence or order passed or made by a Court of competent jurisdiction shall be reversed or altered on account of —

(a) any error, omission or irregularity in the plaint, summons, warrant, charge, judgment or other proceedings under this Code:.....

There is, however, nothing in this section which will authorise a person who was not a party to the original charge to intervene at a later stage and constitute himself an appellant. In this appeal there was a fundamental error of procedure not authorised by any provision in any law in force in this Settlement. We regret therefore that we must decide that the "appellant" had no authority to file his petition of appeal to the High Court and that in fact there was no valid appeal before that Court at any time. It naturally follows that the learned Judge of that Court could not reserve that matter for the consideration of this Court under section 306 (3) of the Criminal Procedure Code. Accordingly this appeal is dismissed.

Appeal Dismissed.